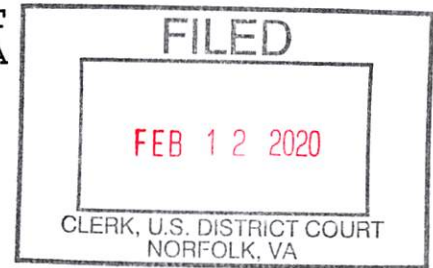


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



PUBLIC SERVICE EMPLOYEES LOCAL
UNION 572, LIUNA,

Plaintiff,

v.

CIVIL ACTION NO. 2:19cv490

PROFESSIONAL CONTRACT SERVICES,
INC.,

Defendant.

DISMISSAL ORDER

This matter comes before the court on Plaintiff's, Public Service Employees Local Union 572, LIUNA ("Plaintiff"), Motion to Compel Arbitration and/or Motion for Summary Judgment. ECF Nos. 13, 15.¹ The Defendant, Professional Contract Services, Inc. ("Defendant"), filed a Motion to Strike or Stay Plaintiff's Motion pursuant to Federal Rule of Civil Procedure 56(d). ECF No. 18. Plaintiff filed a Memorandum in Opposition, ECF No. 20, and Defendant filed a Reply thereto. ECF No. 21.

¹ In seeking to compel arbitration, Plaintiff filed two separate motions, which are docketed as (1) Motion to Compel Arbitration and/or for Summary Judgment, ECF No. 13, and (2) Motion to Compel Arbitration, ECF No. 15. The two motions and their supporting memoranda are identical. Accordingly, the undersigned will refer to the motions collectively as a single Motion.

On January 3, 2020, the matter was referred to United States Magistrate Judge Douglas E. Miller pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct necessary hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of the Motion to Compel Arbitration and/or for Summary Judgment, and the Motion to Strike or Stay. The Magistrate Judge's Report and Recommendation ("R&R"), which recommended granting Plaintiff's Motion to Compel Arbitration and/or for Summary Judgment, ECF Nos. 13, 15, and denying Defendant's Motion to Strike or Stay, ECF No. 18, was filed on January 23, 2020. ECF No. 27. In the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date of the mailing of the R&R to the objecting party. Id. at 18-19. No objections were filed.

The court **ADOPTS AND APPROVES IN FULL** the findings and recommendations set forth in the Magistrate Judge's thorough and well-reasoned R&R filed on January 23, 2020. Accordingly, the Plaintiff's Motion to Compel Arbitration and/or for Summary Judgment is **GRANTED**, and the Defendant's Motion to Strike or Stay is **DENIED**.

The court concludes that it is for an arbitrator, not the court, to determine whether Plaintiff waived its right to arbitration by the simultaneous filing of an unfair labor practices charge or any other defenses to arbitration raised in the Answer. Alternatively, the court concludes that Plaintiff did not waive its right to arbitration by simultaneously filing an unfair labor practices charge with the National Labor Relations Board ("NLRB") and that the discovery sought by Defendant would not bear on resolution of that issue. The case is **DISMISSED** from the court's docket without prejudice to arbitration of the matters at issue.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to counsel for all parties.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
Senior United States District Judge

RBS

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

February 11, 2020